IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:07/10/2004

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.18501 of 1997

Alandur Municipality
rep. by its Commissioner
Alandur, Madras Petitioner

-Vs-

1.Presiding Officer
I Addl. Labour Court
Madras 104.

2.K.Ikbal Ahamad Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records relating to the Award dated 31.03.1997 and made in I.D.No.996/92 on the file of I Additional Labour Court, Madras and Quash t

For Petitioner : Mr. V.Subbarayan

For Respondents : Mr. K.M.Ramesh for R2

:ORDER

This writ petition has been filed for the issuance of a writ of Certiorari, to call for the records relating to the Award dated 31.03.199 7 and made in I.D.No.996/92 on the file of I Additional Labour Court, Madras and Quash the same.

2. The second respondent herein was appointed as NMR by order dated 02.01.1981 for a period of three months. Thereafter, according to the second respondent he was continued in service till 12.01.1992. Thereafter, he was terminated and hence he raised the Industrial Dispute on the ground that he was dismissed from service.

3. The Labour Court considered the dispute on the basis of evidence adduced and come to the conclusion that the second respondent was entitled to reinstatement with back wages. The Award of the Labour Court is now challenged in the present writ petition.

4. The Learned counsel appearing for the petitioner/Municipality submitted that the Labour Court has shifted the burden on the respondent to

disprove that the second respondent did not work under the Municipality from 18.09.1992. On the other hand, it is the duty of the person to prove the claim that he worked continuously. Therefore, shifting of the burden by the Labour Court is not legal and on that ground it has to be set aside.

5. Mr.K.M.Ramesh, learned counsel appearing for the second respondent submitted that the employee has proved the fact that he was employed in the year 1989 and till 1992, he worked continuously through Exs.A.6 and A.7. The employee also filed an Interlocutory Application for production of those ledgers. But that was not produced. Therefore, adverse inference has to be drawn that he was worked continuously. So viewed, the Award of the Labour Court cannot be set aside.

6. When a person claims that he was continuously worked for a particular period, the burden is only on him to prove that he worked continuously. Admittedly, Ex.P.1 was an order of appointment as a driver only for a period of three months. Therefore, it has to be presumed that he was terminated at the end of third month, unless there is another order appointing him in service. In the absence of any such document, it can not be presumed that he worked continuously after three months. It is true that Exs.P.1 and P.3 relates to beginning of the year 1992. According to the respondent, he worked under different Scheme called 'Nehru Employment Scheme' which was a temporary work carried on by the Municipality only on certain specific purpose. Therefore, that cannot be considered as employment by the Municipality. Though several contentions have been raised by the respondent, the respondent has not proved that he worked under 'Nehru Employment Scheme'. It has been pointed out in the Award of the Labour Court, neither the petitioner nor the respondent have proved their case.

7. Under these circumstances, the Award of the Labour Court has to be set aside and hence it is set aside. Considering the facts and circumstances of the case, the matter is remitted back to the Labour Court so that to give a fresh finding on the evidence that may be adduced by both. The petitioner and the respondent are at liberty to adduce any fresh evidence and the Labour Court shall decide the issue by considering such evidence. In view of the long age of the Industrial Dispute, the Labour court shall dispose of the matter within three months from this date.

Index:yes

Internet:yes

ksr

To
1.Presiding Officer
I Addl. Labour Court
Madras 104.